

MONTANA LEGISLATIVE HISTORY

Chapter 162 19 93

Bill H 464 S \_\_\_\_\_

Original bill & history ✓ C

H. Committee on Business & Economic Develop. S. Committee on Business & Industry,

Hearing Date(s) Feb 11 ✓ C

Hearing Date(s) Mar 10 ✓ C

\_\_\_\_\_ C

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\_\_\_\_\_ C

Date Out 2/11 ✓ C

out: 3/10 ✓

Did this bill originate in an interim committee? \_\_\_\_ Yes \_\_\_\_ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

|      |                                                               |    |    |
|------|---------------------------------------------------------------|----|----|
| 3/27 | 2ND READING INDEFINITELY POSTPONED                            | 33 | 13 |
| 3/29 | RECONSIDERED PREVIOUS ACTION AND<br>REREFERRED TO FISH & GAME | 34 | 14 |
| 4/06 | HEARING                                                       |    |    |
| 4/07 | COMMITTEE REPORT—BILL CONCURRED                               |    |    |
| 4/08 | 2ND READING CONCURRED                                         | 33 | 12 |
| 4/12 | 3RD READING CONCURRED                                         | 39 | 9  |
|      | RETURNED TO HOUSE                                             |    |    |
| 4/20 | SIGNED BY SPEAKER                                             |    |    |
| 4/21 | SIGNED BY PRESIDENT                                           |    |    |
| 4/22 | TRANSMITTED TO GOVERNOR                                       |    |    |
| 4/24 | SIGNED BY GOVERNOR                                            |    |    |
|      | CHAPTER NUMBER 511                                            |    |    |
|      | EFFECTIVE DATE: 07/01/93                                      |    |    |

HB 464 INTRODUCED BY FISHER, ET AL.  
 EXTEND ANTIFRAUD PROVISIONS OF SECURITY LAWS AND ELIMINATE  
 CERTAIN DUAL REGISTRATION  
 BY REQUEST OF STATE AUDITOR

|      |                                             |    |   |
|------|---------------------------------------------|----|---|
| 2/04 | INTRODUCED                                  |    |   |
| 2/04 | REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT |    |   |
| 2/04 | FIRST READING                               |    |   |
| 2/11 | HEARING                                     |    |   |
| 2/12 | COMMITTEE REPORT—BILL PASSED AS AMENDED     |    |   |
| 2/13 | 2ND READING PASSED                          | 95 | 1 |
| 2/16 | 3RD READING PASSED                          | 99 | 0 |
|      | TRANSMITTED TO SENATE                       |    |   |
| 2/20 | FIRST READING                               |    |   |
| 2/20 | REFERRED TO BUSINESS & INDUSTRY             |    |   |
| 3/10 | HEARING                                     |    |   |
| 3/10 | COMMITTEE REPORT—BILL CONCURRED             |    |   |
| 3/11 | 2ND READING CONCURRED                       | 48 | 0 |
| 3/12 | 3RD READING CONCURRED                       | 48 | 0 |
|      | RETURNED TO HOUSE                           |    |   |
| 3/16 | SIGNED BY SPEAKER                           |    |   |
| 3/18 | SIGNED BY PRESIDENT                         |    |   |
| 3/20 | TRANSMITTED TO GOVERNOR                     |    |   |
| 3/24 | SIGNED BY GOVERNOR                          |    |   |
|      | CHAPTER NUMBER 162                          |    |   |
|      | EFFECTIVE DATE: 10/01/93                    |    |   |

HB 465 INTRODUCED BY RYAN, ET AL.  
 GENERALLY REVISE MEDICARE SUPPLEMENT INSURANCE LAWS

|      |                                             |     |   |
|------|---------------------------------------------|-----|---|
| 2/04 | INTRODUCED                                  |     |   |
| 2/04 | REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT |     |   |
| 2/04 | FIRST READING                               |     |   |
| 2/18 | HEARING                                     |     |   |
| 2/19 | COMMITTEE REPORT—BILL PASSED                |     |   |
| 2/20 | 2ND READING PASSED                          | 99  | 0 |
| 2/23 | 3RD READING PASSED                          | 100 | 0 |
|      | TRANSMITTED TO SENATE                       |     |   |
| 3/01 | FIRST READING                               |     |   |
| 3/01 | REFERRED TO BUSINESS & INDUSTRY             |     |   |
| 3/09 | HEARING                                     |     |   |
| 3/10 | COMMITTEE REPORT—BILL CONCURRED             |     |   |
| 3/12 | 2ND READING CONCURRED                       | 48  | 0 |
| 3/13 | 3RD READING CONCURRED                       | 47  | 0 |

HOUSE BILL NO. 464

INTRODUCED BY FISHER, KENNEDY, STRIZICH  
BY REQUEST OF THE STATE AUDITOR

## IN THE HOUSE

FEBRUARY 4, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FIRST READING.

FEBRUARY 12, 1993

COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 13, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

**FEBRUARY 15, 1993**

ENGROSSING REPORT.

FEBRUARY 16, 1993

THIRD READING, PASSED.  
AYES, 99; NOES, 0.

**FEBRUARY 17, 1993**

TRANSMITTED TO SENATE.

## IN THE SENATE

FEBRUARY 20, 1993

INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 10, 1993

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 11, 1993

**SECOND READING, CONCURRED IN.**

**MARCH 12, 1993**

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

RETURNED TO HOUSE.

## IN THE HOUSE

MARCH 13, 1993

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 464 Boo X  
 2 INTRODUCED BY M. Helen Kennedy  
 3 BY REQUEST OF THE STATE AUDITOR

4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE ANTIFRAUD  
 6 PROVISIONS OF THE SECURITIES LAWS BY MODIFYING THE  
 7 DEFINITION OF AN INVESTMENT ADVISER; ELIMINATING THE DUAL  
 8 REGISTRATION REQUIREMENT FOR BROKER-DEALERS AND INVESTMENT  
 9 ADVISERS WHO ARE SOLE PROPRIETORS EMPLOYING NO OTHER  
 10 SALESPERSONS, INVESTMENT ADVISERS, OR INVESTMENT ADVISER  
 11 REPRESENTATIVES; AND AMENDING SECTIONS 30-10-103 AND  
 12 30-10-201, MCA."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 **Section 1.** Section 30-10-103, MCA, is amended to read:

16 "30-10-103. Definitions. When used in parts 1 through 3  
 17 of this chapter, unless the context requires otherwise, the  
 18 following definitions apply:

19 (1) "Broker-dealer" means any person engaged in the  
 20 business of effecting transactions in securities for the  
 21 account of others or for his the person's own account.

22 "Broker-dealer" does not include:

23 (a) a salesman salesperson, issuer, bank, savings  
 24 institution, trust company, or insurance company; or

25 (b) a person who has--no does not have a place of

1 business in this state if he the person effects transactions  
 2 in this state exclusively with or through the issuers of the  
 3 securities involved in the transactions, other  
 4 broker-dealers, or banks, savings institutions, trust  
 5 companies, insurance companies, investment companies as  
 6 defined in the Investment Company Act of 1940, pension or  
 7 profit-sharing trusts, or other financial institutions or  
 8 institutional buyers, whether acting for themselves or as  
 9 trustee.

10 (2) "Commissioner" means securities commissioner of  
 11 this state.

12 (3) (a) "Commodity" means:

13 (i) any agricultural, grain, or livestock product or  
 14 byproduct;

15 (ii) any metal or mineral, including a precious metal,  
 16 or any gem or gem stone, whether characterized as precious,  
 17 semiprecious, or otherwise;

18 (iii) any fuel, whether liquid, gaseous, or otherwise;

19 (iv) foreign currency; and

20 (v) all other goods, articles, products, or items of  
 21 any kind.

22 (b) Commodity does not include:

23 (i) a numismatic coin with a fair market value at least  
 24 15% higher than the value of the metal it contains;

25 (ii) real property or any timber, agricultural, or

1 livestock product grown or raised on real property and  
2 offered and sold by the owner or lessee of such the real  
3 property; or

4 (iii) any work of art offered or sold by an art dealer  
5 at public auction or offered or sold through a private sale  
6 by the owner.

7 (4) "Commodity Exchange Act" means the federal statute  
8 of that name as amended on the effective date of this  
9 subsection.

10 (5) "Commodity futures trading commission" means the  
11 independent regulatory agency established by congress to  
12 administer the Commodity Exchange Act.

13 (6) (a) "Commodity investment contract" means any  
14 account, agreement, or contract for the purchase or sale,  
15 primarily for speculation or investment purposes and not for  
16 use or consumption by the offeree or purchaser, of one or  
17 more commodities, whether for immediate or subsequent  
18 delivery or whether delivery is intended by the parties, and  
19 whether characterized as a cash contract, deferred shipment  
20 or deferred delivery contract, forward contract, futures  
21 contract, installment or margin contract, leverage contract,  
22 or otherwise. Any commodity investment contract offered or  
23 sold, in the absence of evidence to the contrary, is  
24 presumed to be offered or sold for speculation or investment  
25 purposes.

1 (b) A commodity investment contract does not include a  
2 contract or agreement that requires, and under which the  
3 purchaser receives, within 28 calendar days after the  
4 payment in good funds of any portion of the purchase price,  
5 physical delivery of the total amount of each commodity to  
6 be purchased under the contract or agreement. The purchaser  
7 is not considered to have received physical delivery of the  
8 total amount of each commodity to be purchased under the  
9 contract or agreement when the commodity or commodities are  
10 held as collateral for a loan or are subject to a lien of  
11 any person when the loan or lien arises in connection with  
12 the purchase of each commodity or commodities.

13 (7) (a) "Commodity option" means any account,  
14 agreement, or contract giving a party to the account,  
15 agreement, or contract the right but not the obligation to  
16 purchase or sell one or more commodities or one or more  
17 commodity contracts, whether characterized as an option,  
18 privilege, indemnity, bid, offer, put, call, advance  
19 guaranty, decline guaranty, or otherwise.

20 (b) The term does not include an option traded on a  
21 national securities exchange registered with the U.S.  
22 securities and exchange commission.

23 (8) "Guaranteed" means guaranteed as to payment of  
24 principal, interest, or dividends.

25 (9) (a) "Investment adviser" means any person who, for

1 compensation, engages in the business of advising others,  
2 either directly or through publications or writings, as to  
3 the value of securities or as to the advisability of  
4 investing in, purchasing, or selling securities or who, for  
5 compensation and as a part of a regular business, issues or  
6 promulgates analyses or reports concerning securities.

7 (b) The term includes a financial planner or other  
8 person who:

9 (i) as an integral component of other financially  
10 related services, provides the investment advisory services  
11 described in subsection (9)(a) to others for compensation,  
12 as part of a business; or

13 (ii) represents himself-as-providing to the public that  
14 the person provides the investment advisory services  
15 described in subsection (9)(a) to others for compensation.

16 (c) Investment adviser does not include:

17 (i) an investment adviser representative;

18 (ii) a bank, savings institution, trust company, or  
19 insurance company;

20 (iii) a lawyer, accountant, engineer, or teacher whose  
21 performance of these services is solely incidental to the  
22 practice of his the person's profession;

23 (iv) a registered broker-dealer whose performance of  
24 services described in subsection (9)(a) is solely incidental  
25 to the conduct of business and for which the broker-dealer

1 does not receive special compensation;

2 (v) a publisher of any newspaper, news column,  
3 newsletter, news magazine, or business or financial  
4 publication or service, whether communicated in hard copy  
5 form or by electronic means or otherwise, that does not  
6 consist of the rendering of advice on the basis of the  
7 specific investment situation of each client;

8 (vi) a person whose advice, analyses, or reports relate  
9 only to securities exempted by 30-10-104(1); or

10 (vii) such other persons not within the intent of this  
11 subsection (9) as the commissioner may by rule or order  
12 designate.

13 (10) (a) "Investment adviser representative" means any  
14 partner of, officer of, director of, or a person occupying a  
15 similar status or performing similar functions, or other  
16 individual employed by or associated with an investment  
17 adviser, except clerical or ministerial personnel, who:

18 (i) makes any recommendation or otherwise renders  
19 advice regarding securities to clients;

20 (ii) manages accounts or portfolios of clients;

21 (iii) solicits, offers, or negotiates for the sale or  
22 sells investment advisory services; or

23 (iv) supervises employees who perform any of the  
24 foregoing.

25 (b) ~~Investment-adviser-representative-does-not--include~~

1 an---individual---registered---as---a---salesman---pursuant---to  
 2 30-10-201. A salesperson registered pursuant to 30-10-201(1)  
 3 who performs services described in subsection 10(a) shall  
 4 also register as an investment adviser representative.

5 (11) "Issuer" means any person who issues or proposes to  
 6 issue any security, except that with respect to certificates  
 7 of deposit, voting-trust certificates, or collateral-trust  
 8 certificates or with respect to certificates of interest or  
 9 shares in an unincorporated investment trust not having a  
 10 board of directors (or persons performing similar functions)  
 11 or of the fixed, restricted management, or unit type, the  
 12 term "issuer" means the person or persons performing the  
 13 acts and assuming the duties of depositor or manager  
 14 pursuant to the provisions of the trust or other agreement  
 15 or instrument under which the security is issued.

16 (12) "Nonissuer" means not directly or indirectly for  
 17 the benefit of the issuer.

18 (13) "Person", for the purpose of parts 1 through 3 of  
 19 this chapter, means an individual, a corporation, a  
 20 partnership, an association, a joint-stock company, a trust  
 21 where the interests of the beneficiaries are evidenced by a  
 22 security, an unincorporated organization, a government, or a  
 23 political subdivision of a government.

24 (14) "Precious metal" means the following, in coin,  
 25 bullion, or other form:

1 (a) silver;  
 2 (b) gold;  
 3 (c) platinum;  
 4 (d) palladium;  
 5 (e) copper; and  
 6 (f) such other items as the commissioner may by rule or  
 7 order specify.

8 (15) "Registered broker-dealer" means a broker-dealer  
 9 registered pursuant to 30-10-201.

10 (16) (a) "Sale" or "sell" includes every contract of  
 11 sale of, contract to sell, or disposition of a security or  
 12 interest in a security for value.

13 (b) "Offer" or "offer to sell" includes every attempt  
 14 or offer to dispose of or solicitation of an offer to buy a  
 15 security or interest in a security for value.

16 (c) Any security given or delivered with or as a bonus  
 17 on account of any purchase of securities or any other thing  
 18 is considered to constitute part of the subject of the  
 19 purchase and to have been offered and sold for value. A  
 20 purported gift of assessable stock is considered to involve  
 21 an offer and sale. Every sale or offer of a warrant or right  
 22 to purchase or subscribe to another security of the same or  
 23 another issuer, as well as every sale or offer of a security  
 24 which gives the holder a present or future right or  
 25 privilege to convert into another security of the same or

1 another issuer, is considered to include an offer of the  
2 other security.

3 (17) "Salesman" "Salesperson" means any individual other  
4 than a broker-dealer who represents a broker-dealer or  
5 issuer in effecting or attempting to effect sales of  
6 securities. A partner, officer, or director of a  
7 broker-dealer or issuer is a salesman salesperson only if he  
8 the person otherwise comes within this definition.  
9 "Salesman" Salesperson does not include an individual who  
10 represents an issuer in:

11 (a) effecting a transaction in a security exempted by  
12 subsection (1), (2), (3), (8), (9), (10), or (11) of  
13 30-10-104;

14 (b) effecting transactions exempted by 30-10-105 except  
15 when registration as a salesman salesperson, pursuant to  
16 30-10-201, is required by 30-10-105 or by any rule  
17 promulgated under 30-10-105; or

18 (c) effecting transactions with existing employees,  
19 partners, or directors of the issuer if no commission or  
20 other remuneration is paid or given directly or indirectly  
21 for soliciting any person in this state.

22 (18) "Securities Act of 1933", "Securities Exchange Act  
23 of 1934", "Public Utility Holding Company Act of 1935",  
24 "Investment Advisors Act of 1940", and "Investment Company  
25 Act of 1940" mean the federal statutes of those names as

1 amended before or after July 1, 1961.

2 (19) "Security" means any note; stock; treasury stock;  
3 bond; commodity investment contract; commodity option;  
4 debenture; evidence of indebtedness; certificate of interest  
5 or participation in any profit-sharing agreement;  
6 collateral-trust certificate; preorganization certificate or  
7 subscription; transferable shares; investment contract;  
8 voting-trust certificate; certificate of deposit for a  
9 security; certificate of interest or participation in an  
10 oil, gas, or mining title or lease or in payments out of  
11 production under such a title or lease; or, in general, any  
12 interest or instrument commonly known as a security, any  
13 put, call, straddle, option, or privilege on any security,  
14 certificate of deposit, or group or index of securities,  
15 including any interest in a security or based on the value  
16 of a security, or any certificate of interest or  
17 participation in, temporary or interim certificate for,  
18 receipt for, guarantee of, or warrant or right to subscribe  
19 to or purchase any of the foregoing. "Security" does not  
20 include any insurance or endowment policy or annuity  
21 contract under which an insurance company promises to pay a  
22 fixed sum of money either in a lump sum or periodically for  
23 life or some other specified period.

24 (20) "State" means any state, territory, or possession  
25 of the United States, as well as the District of Columbia



1 and Puerto Rico.

2 (21) "Transact", "transact business", or "transaction"  
3 includes the meanings of the terms "sale", "sell", and  
4 "offer".

5 **Section 2.** Section 30-10-201, MCA, is amended to read:

6 "30-10-201. Registration of broker-dealers, salesmen  
7 salespersons, investment advisers, and investment adviser  
8 representatives. (1) It is unlawful for a person to transact  
9 business in this state as a broker-dealer or salesman  
10 salesperson, except as provided in 30-10-105, unless he the  
11 person is registered under parts 1 through 3 of this  
12 chapter.

13 (2) It is unlawful for a broker-dealer or issuer to  
14 employ a salesman salesperson to represent him the  
15 broker-dealer or issuer in this state, except in  
16 transactions exempt under 30-10-105, unless the salesman  
17 salesperson is registered under parts 1 through 3 of this  
18 chapter.

19 (3) It is unlawful for any person to transact business  
20 in this state as an investment adviser or as an investment  
21 adviser representative unless:

22 (a) he the person is so registered under parts 1  
23 through 3 of this chapter;

24 (b) he the person is registered as a broker-dealer  
25 under parts 1 through 3 of this chapter;

1 (c) his the person's only clients in this state are:

2 (i) investment companies, as defined in the Investment  
3 Company Act of 1940, or insurance companies;

4 (ii) other investment advisers;

5 (iii) broker-dealers;

6 (iv) banks;

7 (v) trust companies;

8 (vi) savings and loan associations;

9 (vii) employee benefit plans with assets of not less  
10 than \$1 million;

11 (viii) governmental agencies or instrumentalities,  
12 whether acting for themselves or as trustees with investment  
13 control; or

14 (ix) other institutional investors as are designated by  
15 rule or order of the commissioner; or

16 (d) he-has-no the person does not have a place of  
17 business in this state and during any 12 consecutive months  
18 does not direct business communications in this state in any  
19 manner to more than five present or prospective clients,  
20 other than those specified in subsection (3)(c), whether or  
21 not he the person or any of the persons to whom the  
22 communications are directed are then present in this state.

23 (4) A broker-dealer or a salesman salesperson, acting  
24 as an agent for an issuer or as an agent for a broker-dealer  
25 in the offer or sale of securities for an issuer, or an

1 investment adviser or investment adviser representative may  
 2 apply for registration by filing an application in such the  
 3 form as the commissioner prescribes and payment of the fee  
 4 prescribed in 30-10-209. A ~~salesman~~ salesperson acting as  
 5 agent for an issuer or broker-dealer who is not currently in  
 6 compliance with the financial responsibility requirements  
 7 prescribed by the Securities Exchange Act of 1934 and by  
 8 regulations adopted under it, may, in the discretion of the  
 9 commissioner, be required to file with the commissioner a  
 10 bond of a surety company duly authorized to transact  
 11 business in this state. The bond shall be in an amount  
 12 determined by the commissioner, payable to the state of  
 13 Montana and conditioned upon the faithful compliance with  
 14 the provisions of parts 1 through 3 of this chapter, and  
 15 provide that upon failure to so comply, the ~~salesman~~ shall  
 16 be salesperson is liable to any and all persons who may  
 17 suffer loss by reason thereof.

18 (5) The application shall contain whatever information  
 19 the commissioner requires. No A registration application of  
 20 a broker-dealer, ~~salesman~~ salesperson, investment adviser,  
 21 or investment adviser representative may not be withdrawn  
 22 before the commissioner approves or denies such the  
 23 registration, without the express written consent of the  
 24 commissioner.

25 (6) When the registration requirements are met, the

1 commissioner shall make the registration effective. No An  
 2 effective registration of a broker-dealer, ~~salesman~~  
 3 salesperson, investment adviser, or investment adviser  
 4 representative may not be withdrawn or terminated without  
 5 the express written consent of the commissioner.

6 (7) Except as provided in subsection (6), registration  
 7 of a broker-dealer, ~~salesman~~ salesperson, investment  
 8 adviser, or investment adviser representative:

9 (a) is effective until December 31 following such the  
 10 registration or such any other time as the commissioner may  
 11 by rule adopt; and

12 (b) may be renewed.

13 (8) The registration of a ~~salesman~~ salesperson is not  
 14 effective during any period when he the salesperson is not  
 15 associated with an issuer or a registered broker-dealer  
 16 specified in his the application. When a ~~salesman~~  
 17 salesperson begins or terminates a connection with an issuer  
 18 or registered broker-dealer, the ~~salesman~~ salesperson and  
 19 the issuer or broker-dealer shall promptly notify the  
 20 commissioner.

21 (9) The registration of an investment adviser  
 22 representative is not effective during any period when he  
 23 the person is not associated with an investment adviser  
 24 registered under this act and specified in the application.  
 25 When an investment adviser representative begins or

1 terminates a connection with an investment adviser, the  
2 investment adviser shall promptly notify the commissioner.

3 (10) Registration of a broker-dealer, ~~salesman~~  
4 salesperson, investment adviser, or investment adviser  
5 representative may be renewed by filing, prior to the  
6 expiration thereof of the registration, an application  
7 containing such information as the commissioner may require  
8 to indicate any material change in the information contained  
9 in the original application or any renewal application for  
10 registration as a broker-dealer, ~~salesman~~ salesperson,  
11 investment adviser, or investment adviser representative  
12 filed by the applicant, payment of the prescribed fee, and,  
13 in the case of a broker-dealer who is not a member of NASD,  
14 inc., by filing a financial statement showing the financial  
15 condition of such the broker-dealer as of a date within 90  
16 days. A registered broker-dealer or investment adviser may  
17 file an application for registration of a successor, to  
18 become effective upon approval of the commissioner.

19 (11) Every registered broker-dealer and investment  
20 adviser shall make and keep such accounts and other records,  
21 except with respect to securities exempt under 30-10-104(1),  
22 as may be prescribed by the commissioner. All required  
23 ~~records so--required--shall~~ must be preserved for 3 years  
24 unless the commissioner prescribes otherwise for particular  
25 types of records. All the records of a registered

1 broker-dealer or investment adviser are subject at any time  
2 or from time to time to such reasonable periodic, special,  
3 or other examinations, within or without outside this state,  
4 by representatives of the commissioner, as the commissioner  
5 considers necessary or appropriate in the public interest or  
6 for the protection of investors.

7 (12) The commissioner may by order deny, suspend, or  
8 revoke registration of any broker-dealer, ~~salesman~~  
9 salesperson, investment adviser, or investment adviser  
10 representative if he the commissioner finds that the order  
11 is in the public interest and that the applicant or  
12 registrant or, in the case of a broker-dealer or investment  
13 adviser, any partner, officer, director, person occupying a  
14 similar status or performing similar functions, or person  
15 directly or indirectly controlling the broker-dealer or  
16 investment adviser:

17 (a) has filed an application for registration under  
18 this section which, as of its effective date or as of any  
19 date after filing in the case of an order denying  
20 effectiveness, was incomplete in any material respect or  
21 contained any statement which was, in the light of the  
22 circumstances under which it was made, false or misleading  
23 with respect to any material fact;

24 (b) has willfully violated or willfully failed to  
25 comply with any provision of parts 1 through 3 of this

1 chapter or a predecessor law or any rule or order under  
2 parts 1 through 3 of this chapter or a predecessor law;

3 (c) has been convicted of any misdemeanor involving a  
4 security or any aspect of the securities business or any  
5 felony;

6 (d) is permanently or temporarily enjoined by any court  
7 of competent jurisdiction from engaging in or continuing any  
8 conduct or practice involving any aspect of the securities  
9 business;

10 (e) is the subject of an order of the commissioner  
11 denying, suspending, or revoking registration as a  
12 broker-dealer, salesman salesperson, investment adviser, or  
13 investment adviser representative;

14 (f) is the subject of an adjudication or determination,  
15 within the past 5 years, by a securities or commodities  
16 agency or administrator of another state or a court of  
17 competent jurisdiction, that the person has violated the  
18 Securities Act of 1933, the Securities Exchange Act of 1934,  
19 the Investment Advisors Act of 1940, the Investment Company  
20 Act of 1940, or the Commodity Exchange Act or the securities  
21 or commodities law of any other state;

22 (g) has engaged in dishonest or unethical practices in  
23 the securities business;

24 (h) is insolvent, either in the sense that his the  
25 person's liabilities exceed his the person's assets or in

1 the sense that he the person cannot meet his obligations as  
2 they mature, but the commissioner may not enter an order  
3 against a broker-dealer or investment adviser under this  
4 subsection {h} (12) without a finding of insolvency as to  
5 the broker-dealer or investment adviser;

6 (i) has not complied with a condition imposed by the  
7 commissioner under this section or is not qualified on the  
8 basis of such factors as training, experience, or knowledge  
9 of the securities business;

10 (j) has failed to pay the proper filing fee, but the  
11 commissioner may enter only a denial order under this  
12 subsection {j} (12), and he the commissioner shall vacate  
13 any such order when the deficiency has been corrected; or

14 (k) has failed to reasonably supervise his the person's  
15 salesmen salespersons or employees or his investment adviser  
16 representatives or employees to assure their compliance with  
17 this act.

18 (13) The commissioner may not institute a suspension or  
19 revocation proceeding on the basis of a fact or transaction  
20 known to him the commissioner when registration became  
21 effective unless the proceeding is instituted within 30 days  
22 after the date on which the registration became effective.

23 (14) The commissioner may by order summarily postpone or  
24 suspend registration pending final determination of any  
25 proceeding under this section.

1 (15) Upon the entry of the order under subsection (12)  
 2 of this section, the commissioner shall promptly notify the  
 3 applicant or registrant, as well as the employer or  
 4 prospective employer if the applicant or registrant is a  
 5 salesman salesperson or investment adviser representative,  
 6 that it has been entered and of the reasons therefor for the  
 7 order and that if requested by the applicant or registrant  
 8 within 15 days after the receipt of the commissioner's  
 9 notification the matter will be promptly set down for  
 10 hearing. If no a hearing is not requested within 15 days and  
 11 none is ordered by the commissioner, the order will remain  
 12 in effect until it is modified or vacated by the  
 13 commissioner. If a hearing is requested or ordered, the  
 14 commissioner, after notice of and opportunity for hearing,  
 15 may modify or vacate the order or extend it until final  
 16 determination.

17 (16) If the commissioner finds that any registrant or  
 18 applicant for registration is no longer in existence or has  
 19 ceased to do business as a broker-dealer, salesman  
 20 salesperson, investment adviser, or investment adviser  
 21 representative or is subject to an adjudication of mental  
 22 incompetence or to the control of a committee, conservator,  
 23 or guardian or cannot be located after reasonable search,  
 24 the commissioner may by order cancel the registration or  
 25 application.

1 (17) The commissioner may, after suspending or revoking  
 2 registration of any broker-dealer, salesman salesperson,  
 3 investment adviser, or investment adviser representative,  
 4 impose a fine not to exceed \$5,000 upon such the  
 5 broker-dealer, salesman salesperson, investment adviser, or  
 6 investment adviser representative. The fine is in addition  
 7 to all other penalties imposed by the laws of this state and  
 8 must be collected by the commissioner in the name of the  
 9 state of Montana and deposited in the general fund.  
 10 Imposition of any fine under this subsection is an order  
 11 from which an appeal may be taken pursuant to 30-10-308. If  
 12 any broker-dealer, salesman salesperson, investment adviser,  
 13 or investment adviser representative fails to pay a fine  
 14 referred to in this subsection, the amount of the fine is a  
 15 lien upon all of the assets and property of such the  
 16 broker-dealer, salesman salesperson, investment adviser, or  
 17 investment adviser representative in this state and may be  
 18 recovered by suit by the commissioner and deposited in the  
 19 general fund. Failure of a broker-dealer, salesman  
 20 salesperson, investment adviser, or investment adviser  
 21 representative to pay a fine also constitutes a forfeiture  
 22 of his the right to do business in this state under parts 1  
 23 through 3 of this chapter.

24 (18) A sole proprietor registered as a broker-dealer or  
 25 investment adviser who does not employ other salespersons or

1 investment adviser representatives, other than the sole  
2 proprietor, is not required to register as both a  
3 broker-dealer and a salesperson or as an investment adviser  
4 and an investment adviser representative if the sole  
5 proprietor meets the examination requirements established by  
6 the commissioner by rule."

7 NEW SECTION. Section 3. Registration of previous  
8 filing. A registered salesperson who has filed with the  
9 commissioner as an investment adviser as of October 1, 1993,  
10 shall register as an investment adviser representative by  
11 October 1, 1994.

12 NEW SECTION. Section 4. Code commissioner instruction.  
13 Wherever the term "salesman" or its equivalent appears in  
14 Title 30, chapter 10, parts 1 through 3, or in legislation  
15 enacted by the 1993 legislature, the code commissioner shall  
16 substitute the term "salesperson" or its equivalent and make  
17 any necessary grammatical changes to reflect the name  
18 change.

-End-

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SIMON asked Frank Cote why there is a need for an insurance protection department when it is already in the statutes? Mr. Cote said by passing the bill without placing it in statute would not have changed anything. There still would not be statutory responsibility for the insurance commissioner to have a consumer protection department.

Closing by Sponsor:

REP. DOWELL closed.

HEARING ON HB 464

Opening Statement by Sponsor:

REP. MARJORIE FISHER, House District 3, Whitefish, said HB 464 is also at the request of the state auditor's office. She said this bill deals with the securities business at the state level. It extends the anti-fraud provisions of the securities laws by modifying the definition of an investment adviser. HB 464 will eliminate dual registration requirements for broker-dealers and investment advisers who are sole proprietors employing no other salespersons, investment advisers, or investment adviser representatives. She said there are three ways that people work with broker-dealers: 1) there are independent dealers who can contract with broker-dealers who provide services in regulatory requirements mandated by both the federal and the state; 2) a person may work for a broker-dealer as an employee; and 3) how to become a broker-dealer. She talked about a wrap-around fee. She said if someone came in to work with a broker-dealer and said they have so much money to invest, but do not want to pay mutual load, she would place them into what is called the wrap-around and then would buy no-loads. If the investments did well, then the broker-dealer would make a percentage of the dollar amount received.

Proponents' Testimony:

Melissa Broch, State Auditor's Office, is the staff attorney for the Securities Department. She said that HB 464 expands consumer protection in Montana as a reflection of recent changes in the securities industry. The lines separating different types of financial services are becoming less and less clear. Banks, broker-dealers, insurance companies are broadening the types of services provided to their clients in an effort to more adequately meet the clients' needs. These clients need the reassurance that the securities department is able to respond to

their changing needs for consumer protection. She distributed written testimony and amendments. EXHIBIT 18

**Clyde Daily**, Executive Director Montana Senior Citizens Association, said the association supports this legislation. He said that senior citizens are vulnerable at this time because of the low interest rates. Many seniors live off these investments and move their money around trying to find other investments.

Opponents' Testimony:

**Bruce MacKenzie**, Securities Industry Association (SIA), said the association has over 600 securities-brokers-dealers across the country. He said they comprise over 90 percent of all securities transactions in the state. He said as HB 464 is currently drafted and amended, the association cannot support this legislation without further amending. He said they have been working with the securities department and wanted it to be on record that they have worked together to make this a working revision. He said they are opposed to the bill because at the present time the broker-dealers i.e., D.A. Davidson, Merrill Lynch, Piper Jaffrey, are security salesmen and have to register also and take the exam. He said there are investment advisors who do not sell the security, but give advice with respect to the securities and give recommendations to people whether they accept the advice or not. EXHIBIT 19

Questions From Committee Members and Responses:

REP. SIMON asked Melissa Broch about the changes suggested by Bruce MacKenzie and if she accepted his amendments? Ms. Broch said that Mr. MacKenzie and the department agree that this is the appropriate language, but need to place it somewhere else.

REP. ELLIS asked Bruce MacKenzie if he agreed and knew how the suggested changes are going to take place? Mr. MacKenzie said he did not want any regulation, but would accept what the department agreed to.

Closing by Sponsor:

REP. FISHER closed by asking the committee to support the auditors recommendations on the changes. She said in regard to the test, it reflects how well a person memorizes details.

EXECUTIVE ACTION ON SB 161

Motion: REP. LARSON MOVED SB 161 BE CONCURRED IN.

Discussion: REP. SONNY HANSON said he didn't think the committee needed to work with lines 5 - 9. The department is taking care of it.



REP. COCCHIARELLA asked Lynn Robson about the bill being retroactive? Ms. Robson said it was going to be taken care of internally.

Motion/Vote: REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Vote: SB 161 BE CONCURRED IN. Motion carried 17 - 1.

#### EXECUTIVE ACTION ON HB 513

Motion: REP. DOWELL MOVED HB 513 DO PASS.

Discussion: REP. SIMON offered an amendment to strike division and replace with department. EXHIBIT 21

REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. DOWELL MOVED HB 513 DO PASS AS AMENDED. REP. STELLA JEAN HANSEN called the question. Voice vote was taken. Motion carried unanimously.

Vote: HB 513 DO PASS AS AMENDED. Motion carried 17 - 1.

#### EXECUTIVE ACTION ON HB 464

Motion: REP. COCCHIARELLA MOVED HB 464 DO PASS.

Discussion: REP. COCCHIARELLA moved to adopt an amendment. EXHIBIT 20

REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. COCCHIARELLA MOVED HB 464 DO PASS AS AMENDED. REP. BRANDEWIE called the question. Voice vote was taken. Motion carried unanimously.

Vote: HB 464 DO PASS AS AMENDED. Motion carried 17 - 1.

HOUSE STANDING COMMITTEE REPORT

February 11, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 464 (first reading copy -- white) do pass as amended .

Signed: Steve Benedict

Steve Benedict, Chair

And, that such amendments read:

1. Page 5, line 13.

Following: "to"

Strike: "the public"

Insert: "any person"

2. Page 5, line 14.

Following: "the"

Insert: "financial planner or other"

3. Page 7, line 2.

Strike: "A"

Insert: "Investment adviser representative does not include a"

4. Page 7, line 3.

Strike: "who performs"

Insert: "whose performance of the"

5. Page 7, lines 3 and 4.

Strike: "shall also register as an"

Insert: "is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered"

6. Page 7, line 4.

Following: "adviser"

Strike: "representative"

7. Page 21, line 9.

Following: "adviser"

Insert: "representative"

-END-

Committee Vote:

Yes 12, No 7

341504SC.Hpf

STATE AUDITOR  
STATE OF MONTANA

EXHIBIT 18  
DATE 2-11-93  
HB 464



COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

Mark O'Keefe  
STATE AUDITOR

TESTIMONY ON HOUSE BILL 464

Mr. Chairman, members of the committee, for the record, my name is Melissa Broch. I am the staff attorney for the Securities Department of the State Auditor's Office.

House Bill 464 expands consumer protection in Montana as a reflection of recent changes in the securities industry. Basically, the lines separating different types of financial services are becoming less and less clear. Banks, broker-dealers, insurance companies are broadening the types of services provided to their clients in an effort to more adequately meet the clients' needs. Those clients need the reassurance that the Securities Department is able to respond to their changing needs for consumer protection.

What House Bill 464 does in a nutshell is extend the coverage of the anti-fraud provisions related to investment advisers to broker-dealers and their salespeople that are selling investment advice. Let me explain how it works.

Section 30-10-103 defines who falls within the definition of an investment adviser or an investment adviser representative. Section 30-10-201 then identifies which of those firms or individuals needs to register. So, there is a two-step test to determine whether the firm or individual has to register.

The first thing HB 464 does is include broker-dealers in the definition of investment adviser if the broker-dealer performs investment advisory services that are not "solely incidental" to executing trades in the customer's account. You can see this change on page 5 at line 23. The registration section now states that registered broker-dealers don't have to register as investment advisers. So, this change imposes no additional substantive burden on broker-dealers.

Similarly, registered salespeople are now excluded from the definition of investment adviser representatives. The change including salespeople within that term starts on line 25 of page 6. The third amendment to HB 464 which Representative Fisher mentioned would eliminate any registration requirement for a salesperson that is not actually giving investment advice.

## BRIEF EXPLANATION OF AMENDMENTS

1. The term "public" has a specific connotation in the securities industry. A "public" offering may involve advertising and other general solicitation techniques. A "private" or non-public offering is one made to specific investors. Use of the term public in this context may be misleading. A person who claims to provide financial advisory services need not do so in a "public" manner, i.e., through advertising, billboards, etc., to fall within the definition of an investment adviser.

2. This amendment corrects a clerical omission. Investment advisers are now required to file with the Securities Department a form listing all the registered salespeople employed by the investment adviser as investment adviser representatives. The registered salespeople are identified by the Securities as "IAREs" or exempt investment adviser representatives. Any registered salesperson whose name has been submitted to the Department by an investment advisory firm as an IARE by October 1, 1993, need not register as an investment adviser representative until October 1, 1994.

3. This amendment addresses the situation where a registered salesman is offering or selling, but not providing, investment advisory services for a registered investment adviser. In a "wrap-fee" arrangement, a broker-dealer contracts with an investment adviser to provide investment advice to the broker-dealer's clients who are interested in obtaining such service. The client pays one fee to the investment adviser. This fee includes the transaction costs for trades in the client's account. The investment adviser pays these fees to the broker-dealer and the broker-dealer pays the salesperson a commission.

If a client asks the salesperson where to go for investment advice, the salesperson refers the client to the investment adviser with whom the salesperson's employing broker-dealer has contracted for such services. The salesperson is not supplying the investment advice and, therefore, should not be required to register as an investment adviser representative.

adviser cannot give accounts to another investment adviser without the client's consent or charge fees based on the gains in the client's account. These protections are not available for clients who currently receive investment advice from a broker-dealer.

If a salesperson is giving investment advice for compensation, that person will have to register as an investment adviser representative in Montana. In order to register, the salesperson must pass an examination geared towards individuals providing investment advisory services. The cost of the exam is \$15, it is given once a month at the College of Great Falls and over 75% of the people who take the exam pass it. This is not the same exam that salespeople take. Right now, clients of salespeople giving investment advice do not have any assurance that the salesperson meets the minimum qualifications for offering those services.

HB 464 will eliminate the requirement that sole proprietors dually registers. An example: a sole proprietor must now register as both an investment adviser and an investment adviser representative. If the sole proprietor is also a broker-dealer, that individual will have to maintain four registrations in Montana. HB 464 reduces this burden by only requiring the sole proprietor to register as an investment adviser or broker-dealer.

In sum, this bill provides important consumer protection and we urge the committee to pass HB 464.

What effect do these changes have? I will pass around copies of the anti-fraud provisions of the Securities Act. Section 30-10-301 provides specific safeguards for clients of investment advisers. For example, an investment adviser cannot give accounts to another investment adviser without the client's consent. An investment adviser cannot charge fees based on the gains in the client's account. These protections are not available for clients who currently receive investment advice from a broker-dealer.

If a salesperson is giving investment advice for compensation, that person will have to register as an investment adviser representative in Montana. In order to register, the salesperson must pass an examination geared towards individuals providing investment advisory services. The cost of the exam is \$15, it is given once a month at the College of Great Falls and over 75% of the people who take the exam pass it. This is not the same exam that salespeople take. Right now, clients of salespeople giving investment advice do not have any assurance that the salesperson meets the minimum qualifications for offering those services.

HB 464 will eliminate the requirement that sole proprietors dually registers. An example: a sole proprietor must now register as both an investment adviser and an investment adviser representative. If the sole proprietor is also a broker-dealer, that individual will have to maintain four registrations in Montana. HB 464 reduces this burden by only requiring the sole proprietor to register as an investment adviser or broker-dealer.

Let me walk you through the amendments. The first two correct clerical errors. The first amendment deletes the word "public" and inserts the words "any person." Public has a specific connotation in securities law. The substitution better tracks the purpose of the statute. The second amendment inserts a word omitted in error.

The third amendment addresses situations involving wrap-fees. Wrap-fees arrangements involve a salesperson who executes trades and an investment adviser representative who gives investment advice. The salesperson may initially refer the client to the investment adviser. This amendment makes clear that a salesperson who merely offers or sells, but does not provide, investment advice, will not have to register as an investment adviser representative.

In sum, this bill provides important consumer protection and we urge the committee to pass HB 464.

STATE AUDITOR  
STATE OF MONTANA

EXHIBIT 18  
DATE 2-11-93  
HB 464

Mark O'Keefe  
STATE AUDITOR



COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

AMENDMENTS TO HB 464

1.

Page 5, Line 13

after "(ii) represents ~~himself as providing to~~"

Strike "the public"

Insert "any person"

2.

Page 21, Line 9

after "commissioner as an investment adviser"

Insert "representative"

3.

Page 7, Line 2

after "~~30-10-201.~~"

Strike "A salesperson registered pursuant to 30-10-201(1) who performs services described in subsection 10(a) shall also register as an investment adviser representative."

Page 12, Line 23

Insert

"(e) the person is registered as a salesperson pursuant to this section and:

(i) the person's performance of the services described in 30-10-103(10) is solely incidental to the conduct of business as a salesperson, and;

(ii) the person receives no compensation other than a fee for offering or selling the services of an investment adviser registered under this section."



**Securities Industry Association**

120 Broadway • New York, NY 10271 • (212) 608 1500 • Telex (212) 608 1504

EXHIBIT 19  
DATE 2-11-93  
HB 464

## **COMBINATION REGISTRATION FOR AGENTS AND INVESTMENT ADVISOR REPRESENTATIVES**

Over the past several years securities regulators have become increasingly concerned about activities and regulation of investment advisors and their agents. The area of strongest concern has been the conduct of certain persons doing business as financial planners. However, the focus of some state regulators has recently shifted from alleged abuses by unregulated financial planners to the burgeoning use of so called "wrap" programs<sup>1</sup> by the broker-dealer community.

More and more states are requiring the registration of investment advisors and their agents. Currently a substantial number of states have such requirements. Legislation was introduced in Colorado and Missouri to expand the investment advisor and investment advisor representative registration requirements. Neither bill passed, however.

As a result of these developments, the securities industry is sometimes being required to register its representatives not only as agents of the broker-dealer, but also as investment advisor representatives of the broker-dealer or its in house investment advisory unit which typically offers the "wrap" program. Fueled by the desire of state legislators to raise revenues by increasing fees and expanding fee-generating requirements, this dual registration approach has become more prevalent.

One state considered *multiple* registration, i.e., the registration of broker-dealer sales agents as investment advisor representatives for each of the outside money managers that participates in a firm's "wrap" program. This approach raised the possibility of an individual sales agent being registered not once, not twice, but twenty times or more!

### **Registration Compliance Can Be An Administrative Nightmare**

It is no exaggeration to say that the varied state law requirements have become an administrative and compliance nightmare for the securities industry. Lapses in compliance have led, for instance, to significant enforcement actions and fines in Alabama, Connecticut and Virginia. In addition, the provisions relating to civil liability under state laws for failure to register may require the making of rescission offers. This creates a constant and ever-present danger.

Further complicating the overall compliance problem relative to "wrap" programs described above is the question of whether the registration must be initiated at the time a client is solicited to be a client of the program or when the agent receives compensation from his or her broker-dealer employer, which sponsors the "wrap" program.

A few states have agreed that registration may take place after the sales agent solicits the client for the wrap program, but before the receipt by the agent of any compensation. This interpretation allows the broker-dealer/investment advisor to

<sup>1</sup> Quite simply, "wrap" programs (so-called because they wrap a number of services together and cover them with a single fee) assist clients in selecting and monitoring investment management firms which have investment philosophies, approaches or specialties preferred by the investing client.



## STATE REGULATION OF FINANCIAL PLANNERS

Some states have sought to capture unlicensed financial planners with a so-called "holding out" statute requiring those holding themselves out to be financial planners or using certain designated titles, such as "financial planner," "financial advisor," or "financial consultant," to register with the state.

SIA supports the state's efforts to regulate those financial planners who are currently unregulated. However, we oppose any additional registration requirement for properly licensed broker-dealer salespersons based simply on the title a firm uses for its salespersons. This memorandum summarizes our views.

- o Individuals who act as financial planners or provide securities advice in a particular state or for that state's residents should be licensed under the state's securities laws.
- o Those who provide securities advice and also effect transactions in investment products should be licensed as broker-dealer salespersons.
- o Those who provide securities advice but do not effect transactions in investment products (so-called "fee only" planners, for example) should be licensed as investment advisors.
- o Licensed broker-dealer salespersons should *not* be required to be licensed also as financial planners simply because their firm uses certain designated titles for its salespeople. Licensed broker-dealer salespeople whose firms use such titles as "Financial Advisor" or "Financial Consultant" for its salespeople would be required to register as investment advisors under some state "holding out" statutes (in addition to registering as broker-dealer salespeople), while licensed salespeople whose firms use such titles as "Account Executive" or "Investment Executive" would not. Duplicate registration of the same broker-dealer salesperson provides no greater protection for investors.
- o Any state law or regulation to require special licensing of financial planners should contain a clear and complete exemption for broker-dealer salespersons currently licensed under the state securities laws.

For further information, contact William Jordan, Director of State Governmental Affairs at 212-608-1500.

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*Securities Industry Association represents over 600 investment firms headquartered throughout the United States and Canada. SIA members include securities organizations of virtually all types which are active in all markets. Collectively, they provide investors with a full spectrum of investment services and account for approximately 90 percent of the securities business being done in North America.*

Amendments to House Bill No. 464  
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon  
February 11, 1993

1. Page 5, line 13.  
Following: "to"  
Strike: "the public"  
Insert: "any person"
2. Page 5, line 14.  
Following: "the"  
Insert: "financial planner or other"
3. Page 7, line 2.  
Strike: "A"  
Insert: "Investment adviser representative does not include a"
4. Page 7, line 3.  
Strike: "who performs"  
Insert: "whose performance of the"
5. Page 7, lines 3 and 4.  
Strike: "shall also register as an"  
Insert: "is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered"
6. Page 7, line 4.  
Following: "adviser"  
Strike: "representative"
7. Page 21, line 9.  
Following: "adviser"  
Insert: "representative"

EXECUTIVE ACTION ON HB 513

Motion/Vote:

Senator Klampe moved HB 513 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 493

Motion:

Senator Kennedy moved HB 493 BE CONCURRED IN. The motion CARRIED 11 to 1 with Senator Gage voting NO.

HEARING ON HB 464

Opening Statement by Sponsor:

Representative Dorothy Fisher, House District 3, stated HB 464 had two major parts. She stated the first part is a consumer protection section which addresses firms or brokers which are giving out financial advice. These would be classified advisors and must pass a state test. She stated the second part of HB 464 would not require people who are listed as a Broker/Dealer and a Registered Investment Advisor register as both.

Proponents' Testimony:

Melissa Brach, Securities Attorney, State Auditor's Office, read from prepared testimony in support of HB 464 (Exhibit #1).

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Representative Fisher closed on HB 464. She asked Senator Kennedy to carry HB 464.

EXECUTIVE ACTION ON 464

Motion/Vote:

Senator Rea moved HB 464 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 305

Motion:

Senator Kennedy moved HB 305 BE AMENDED to allow limousines to go out of their designated counties in order to retrieve a customer which they would bring back into their area. He also proposed an amendment to change the 2 hour rule to 12 hours.

Discussion:

Senator Gage stated the first amendment proposed did not address the problem which had caused the evolution of HB 305.

Senator Kennedy stated he would like to revert to the original law and then add the amendment. He stated the amendments would allow for the limousine drivers to meet the need of areas where they could not go before.

Senator Lynch stated the title of the bill was completely different than what the proposed amendments were addressing.

Mr. Campbell stated if Senator Kennedy's amendments were adopted, the result would be the opposite of the intent of HB 305 as it was introduced.

Senator Gage stated he felt the proposed amendments would effect the trucking authorities and other interstate commerce.

Senator Lynch stated the amendments were out of order.

Senator Kennedy withdrew the motion.

Motion:

Senator Klampe moved HB 305 be amended to change the hours to 24 hours, and to change the passenger size of the cars from 13 to 9.

Motion:

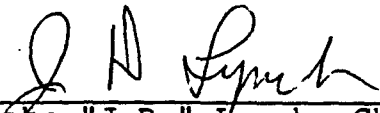
Senator Gage made a substitute motion HB 305 BE NOT CONCURRED IN. The motion failed on ROLL CALL VOTE.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 10, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 464 (first reading copy -- blue), respectfully report that House Bill No. 464 be concurred in.

Signed: 

Senator John "J.D." Lynch, Chair

STATE AUDITOR  
STATE OF MONTANA

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 1

DATE 9/10/93

BILL NO. HB-464

Mark O'Keefe  
STATE AUDITOR



COMMISSIONER OF INSURANCE  
COMMISSIONER OF SECURITIES

TESTIMONY ON HOUSE BILL 464

Mr. Chairman, members of the committee, for the record, my name is Melissa Broch. I am the staff attorney for the Securities Department of the State Auditor's Office.

House Bill 464 expands consumer protection in Montana as a reflection of recent changes in the securities industry. Banks, broker-dealers, insurance companies are broadening the types of services provided to their clients in an effort to more adequately meet their clients' needs. Those clients need the reassurance that the Securities Department is able to respond to their changing needs for consumer protection.

What House Bill 464 does in a nutshell is extend the coverage of the anti-fraud provisions related to investment advisers to broker-dealers and their salespeople that are selling investment advice. Let me explain how it works.

Section 30-10-103 defines who falls within the definition of an investment adviser or an investment adviser representative. Section 30-10-201 then identifies which of those firms or individuals needs to register. So, there is a two-step test to determine whether the firm or individual has to register.

The first thing HB 464 does is include broker-dealers in the definition of investment adviser if the broker-dealer performs investment advisory services that are not "solely incidental" to executing trades in the customer's account. Section 30-10-201 now states that registered broker-dealers don't have to register as investment advisers. So, this change imposes no additional substantive burden on broker-dealers.

Similarly, registered salespeople are now excluded from the definition of investment adviser representatives. HB 464 would include within the definition of investment adviser representative individuals who actually give investment advice to consumers.

What effect do these changes have? The anti-fraud provisions of the Securities Act provide specific safeguards for clients of investment advisers. For example, an investment

adviser cannot give accounts to another investment adviser without the client's consent or charge fees based on the gains in the client's account. These protections are not available for clients who currently receive investment advice from a broker-dealer.

If a salesperson is giving investment advice for compensation, that person will have to register as an investment adviser representative in Montana. In order to register, the salesperson must pass an examination geared towards individuals providing investment advisory services. The cost of the exam is \$15, it is given once a month at the College of Great Falls and over 75% of the people who take the exam pass it. This is not the same exam that salespeople take. Right now, clients of salespeople giving investment advice do not have any assurance that the salesperson meets the minimum qualifications for offering those services.

HB 464 will eliminate the requirement that sole proprietors dually registers. An example: a sole proprietor must now register as both an investment adviser and an investment adviser representative. If the sole proprietor is also a broker-dealer, that individual will have to maintain four registrations in Montana. HB 464 reduces this burden by only requiring the sole proprietor to register as an investment adviser or broker-dealer.

In sum, this bill provides important consumer protection and we urge the committee to pass HB 464.